S E R V E D
November 21, 2014
FEDERAL MARITIME COMMISSION

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DOCKET NO. 14-04

EDAF ANTILLAS, INC.

v.

CROWLEY CARIBBEAN LOGISTICS, LLC;
IFS INTERNATIONAL FORWARDING, S.L.; and
IFS NEUTRAL MARITIME SERVICES

ORDER ON IFS/NEUTRAL MOTION TO ENLARGE TIME TO FILE EXCEPTIONS

On November 6, 2014, I entered an order granting in part and denying in part two motions to dismiss: one filed by Respondents IFS International Forwarding, S.L. (IFS) and IFS Neutral Maritime Service (Neutral) and one filed by Respondent Crowley Caribbean Logistics, LLC (CCL). *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Nov. 6, 2014) (Order on Motions to Dismiss). On November 18, 2014, IFS and Neutral filed a Motion to Enlarge Time for Filing an Appeal of the Order on Motions to Dismiss. On November 19, 2014, CCL filed a response to the motion to enlarge informing the Commission "that CCL plans to file with the Administrative Law Judge a Motion for Reconsideration and a Stay of the Order in this matter. As a result, the substantive issue regarding exceptions raised by IFS may be premature depending on the ALJ's determination in response to CCL's forthcoming motion." (Crowley Caribbean Logistics, LLC's Response to IFS's Motion to Enlarge Time for Filing an Appeal of the Order on Motions to Dismiss.) On November 20, 2014, I was notified by the Office of the Secretary that the Commission had directed the motion to me for disposition.

In their motion, IFS/Neutral note Commission Rule 227, which states: "If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than twenty-two (22) days after service of the ruling on the motion in question." 46 C.F.R. § 502.227(b)(1).

> We read this Rule as requiring any party (including respondents) to file their appeals on a motion to dismiss that has been granted in whole or in part (including where the ALJ has denied a respondent's motion to dismiss a claim) within 22 days. IFS plans to appeal at this time the order of the ALJ to the extent it has not granted certain parts of IFS' motion to dismiss.
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> We are aware, however, of another interpretation of the Commission's Rules where Rule 153 takes precedence in these situations where a respondent's motion to dismiss has been denied in part. Rule 153 can be read to require approval of the ALJ to file interlocutory appeals in such cases where a respondent's request for dismissal has been denied. If that is the case, IFS would have no appeal as of right at this time under Rule 227 and the present deadline of November 28, 2014 would not apply to an appeal by IFS of the ALJ's November 6, 2014 Order. This request for enlargement of time would also be moot.
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> Accordingly, IFS seeks clarification from the Commission whether it has the right at this time to appeal from the ALJ's November 6, 2014 Order or must wait until the conclusion of proceedings before the ALJ.

(Motion to Enlarge Time at 2-3.) The Motion to Enlarge Time seeks extension of the date to file their exceptions to December 5, 2014.

In the federal court system, the United States courts of appeal have jurisdiction of appeals "from all final decisions of the district courts . . . except where a direct review may be had in the Supreme Court." 28 U.S.C. § 1291. "A party generally may not take an appeal under § 1291 until there has been a decision by the district court that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521 (1988) (footnote omitted), *quoting Catlin v. United States*, 324 U.S. 229, 233 (1945). This rule that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits:

> emphasizes the deference that appellate courts owe to the trial judge as the individual initially called upon to decide the many questions of law and fact that occur in the course of trial. Permitting piecemeal appeals would undermine the independence of the district judge, as well as the special role that individual plays in our judicial system. In addition, the rule is in accordance with the sensible policy of "avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise, from its initiation to entry of judgment."

Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981), *quoting Cobbledick v. United States*, 309 U.S. 323, 325 (1940).

By regulation, the Commission has created an exception to this procedure. When an administrative law judge *grants* a motion to dismiss in part, as occurred in this proceeding, a party may file exceptions to the dismissal within twenty-two days to obtain immediate review. 46 C.F.R. § 502.227(b)(1). It is clear from their filings that IFS/Neutral seek review of the *denial* of portions of the motion to dismiss. The denial of a motion to dismiss is an interlocutory order that is appealable only in rare circumstances. The Supreme Court has recognized that there is a "small class" of decisions that are immediately appealable under section 1291 even though the decision has not terminated the proceedings in the district court. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949). A decision is final and appealable for purposes of section 1291 if it "finally determine[s] claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.* To come within the collateral order doctrine of *Cohen*, the order must satisfy each of three conditions: It must (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978) (footnote omitted). The denial in this proceeding does not meet these conditions. IFS/Neutral are correct that they "have no appeal as of right at this time under Rule 227 and the present deadline of November 28, 2014 would not apply to an appeal by IFS of the ALJ's November 6, 2014 Order." To the extent the motion seeks enlargement of time to file exceptions to the denial of the motion to dismiss, it seeks extension of time to do something that IFS/Neutral have no right to do.

IFS/Neutral also seek clarification of their rights. IFS/Neutral's statement that Rule 153 requires approval of the administrative law judge in order to appeal the denial of a motion to dismiss is correct. Commission Rule 153 provides that a presiding officer may allow an interlocutory appeal if he or she finds it necessary "to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party." 46 C.F.R. § 502.153(a). The Commission has recognized that it is an "extraordinary step" to grant leave to petition the Commission "to overturn the ALJ's jurisdictional ruling denying [a] motion to dismiss." *Inlet Fish Producers, Inc. v. Sea-Land Service, Inc.*, 29 S.R.R. 306, 315 (2001) (*Inlet Fish III*). The Commission has also held that it is appropriate to look to the procedures established for the district courts for guidance in determining whether an interlocutory appeal is appropriate. *See Amzone International, Inc. v. Hyundai Merchant Marine Co.*, 27 S.R.R. 386, 389 (1995) ("[I]nterlocutory appeals are permissible if a district judge certifies that an otherwise unappealable order '. . . involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation . . . .' 28 U.S.C. § 1292(b)."). The moving party bears the burden of demonstrating that interlocutory appeal is appropriate. *United States ex rel. Branch Consultants, L.L.C. v. Allstate Ins. Co.*, 668 F. Supp. 2d 780, 813 (E.D. La. 2009); 46 C.F.R. § 502.155. *See also Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, FMC No. 09-01, Order at 11-13 (ALJ Aug. 13, 2010) (Memorandum and Order on Motions for Reconsideration, Leave to Appeal Order Denying Motions to Dismiss, and Stay Pending Appeal).

Construing IFS/Neutral's motion as a motion to enlarge the time to seek leave to appeal the denial of their motion to dismiss, it is hereby

ORDERED that the motion be **GRANTED**. The time for IFS/Neutral to file a motion for leave to appeal is enlarged to December 5, 2014.

THE PARTIES SHOULD NOT CONSTRUE THIS ORDER AS A STAY OF THE DEADLINES SET FORTH IN THE AUGUST 14, 2014, DISCOVERY SCHEDULE. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (Aug. 14, 2014) (August 14, 2014, Discovery Schedule). Even if IFS/Neutral file a motion for leave to appeal and that motion is granted, "[u]nless otherwise provided, the certification of the appeal shall not operate as a stay of the proceeding before the presiding officer." 46 C.F.R. § 502.153(d).

Clay G. Guthridge
Administrative Law Judge